

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

<b>In the Matter of</b>	)	
	)	
<b>Federal-State Joint Board on</b>	)	CC Docket No. 96-45
<b>Universal Service</b>	)	
	)	

**To:   The Commission**

**COMMENTS OF RURAL CELLULAR ASSOCIATION  
AND ALLIANCE OF RURAL CMRS CARRIERS**

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## SUMMARY

The Commission should reject the recommendation set forth by a portion of the Federal-State Joint Board on Universal Service that equal access be added to the list of supported services. The proposal contradicts the direct statutory restriction against requiring providers of commercial mobile services to provide equal access. See, 47 U.S.C. §332(c)(8). Equal access fails to meet the statutory requirement of being essential to education, public health and public safety, and its imposition is inconsistent with the public interest, convenience and necessity. See, 47 U.S.C. §254(c)(1). The addition would disadvantage rural wireless service providers who are members of the Rural Cellular Association and the Alliance of Rural CMRS Carriers, who would be required to provide equal access in order to be eligible telecommunications carriers.

Provision of equal access is impractical and unnecessary to the offering of efficient, low cost wireless services. It would add costs and negate the benefits of carrier-negotiated volume rates for wireless long distance services. Wireless rate plans cannot be improved upon by individual consumers. To customers' detriment, an equal access requirement would threaten their existing rate plans by changing the contractual underpinnings and assumptions upon which phenomenally beneficial carrier-negotiated rates are based.

Because equal access is unsuited to wireless service, imposing the requirement would deny consumers in rural and high cost service areas the improvements to wireless services that are possible only with the support of federal universal service funding. Equal access would do nothing to promote competition among interexchange carriers, which was its original purpose. Rather, it would cause harm by reducing technologically neutral competition among basic telecommunications service providers. Equal access should not be added to the list of core supported services.

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Rural Cellular Association (“RCA”)<sup>1</sup> and Alliance of Rural CMRS Carriers (“ARC”)<sup>2</sup> (jointly “RCA/ARC”) by their attorneys, respectfully submit these Comments in response to the Commission’s Notice of Proposed Rulemaking<sup>3</sup> regarding review by the Federal-State Joint Board on Universal Service (“Joint Board”) of the Commission’s rules relating to definition of services supported by universal service. RCA/ARC particularly address the issue of whether equal access to interexchange service (“equal access”) should be added to the list of supported services, which would require a carrier to provide equal access in order to be eligible for designation as a competitive eligible telecommunications carrier (“ETC”). RCA/ARC oppose addition of equal access to the list.

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<sup>1</sup> RCA is an association representing the interests of small and rural wireless licensees providing commercial services to subscribers throughout the nation. Its member companies provide service in more than 135 rural and small metropolitan markets where approximately 14.6 million people reside. RCA was formed in 1993 to address the distinctive issues facing wireless service providers.

<sup>2</sup> ARC’s membership is comprised of the following carriers (or their subsidiaries): Alaska DigiTel, LLC, Cellular South Licenses, Inc., Guam Cellular and Paging, Inc., Highland Cellular, Inc., Midwest Wireless Holdings L.L.C., N.E. Colorado Cellular, Inc., Rural Cellular Corporation, RFB Cellular, Inc., and Virginia Cellular, LLC.

<sup>3</sup> *Notice of Proposed Rulemaking*, CC Docket 96-45, CC Docket No. 96-45, FCC 03-13, released February 25, 2003 (“NPRM”).

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**I. The Communications Act Prohibits Adding Equal Access to the List of Core Services**

RCA/ARC support the position of the Joint Board members who recommend that equal access to interexchange service not be included in the list of core supported services, and that equal access not become a condition to a carrier's designation as an ETC and its receipt of universal service support.<sup>4</sup> As acknowledged by the Joint Board in its *Recommended Decision*, CC Docket No. 96-45, FCC 02J-1 released July 10, 2002), at p. 27 ("*Recommended Decision*"), the Commission has consistently declined to include equal access in the list of supported services because to do so would be contrary to the mandate of section 332(c)(8) of the Communications Act of 1934, as amended ("Act"), 47 U.S.C. § 332(c)(8), which prohibits any requirement that Commercial Mobile Radio Service ("CMRS") providers offer equal access to toll services.<sup>5</sup> It was considered in the *Recommended Decision* that such a finding would harm local competition and reduce consumer choice, thereby undermining one of the Congress's overriding goals in adopting the 1996 Act. In its *NPRM* the FCC repeated this discussion and set forth the two positions offered by the Joint Board in consideration of the matter. *NPRM* at para. 67, *et seq.*

The Joint Board members who oppose adding equal access to the list of supported services (Opposing Members") correctly maintain that to do so would be inconsistent with the will of Congress, as expressed in Section 332(c)(8). CMRS carriers should not be required to provide equal

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<sup>4</sup> Equal access permits consumers to access the presubscribed long distance carrier of the consumer's choice by dialing 1+ the phone number and is sometime referred to as dialing parity.

<sup>5</sup> According to the statute providers of commercial mobile services "shall not be required to provide equal access to common carriers for the provision of telephone toll services." See, 47 U.S.C. §332(c)(8).

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access in order to be eligible for universal service support when the clear intent of Congress is that CMRS carriers not be required to offer equal access. While the cost of providing equal access is a factor in the distribution of support, the use of that factor is one that “the Commission has stated its intention to address in an upcoming rulemaking,” according to the Opposing Members. *NPRM*, para. 69. Imposing equal access on CMRS carriers at this point would be a gross overreaction to a *single cost issue*. Equal access was originally designed to address competitive concerns in the interexchange market. Imposing it as a required service would impede CMRS access to ETC designation and consumers’ access to supported wireless services.<sup>6</sup>

Today it appears that no part of the high-cost support mechanism serves to compensate incumbent local exchange carriers (“ILECs”) for the cost of delivering equal access. Thus, competitive ETCs that receive “per line” support do not receive funds intended to cover equal access obligations. When the FCC began to impose equal access obligations on ILECs in 1985 as a means of opening the interexchange marketplace, ILECs received a waiver to permit ILECs to expense the cost of providing equal access.<sup>7</sup> Thus, it appears that ILEC equal access costs have been largely bought and paid for, yet there is at present no existing mechanism or plan to similarly permit competitive ETCs to recover the costs.

Joint Board members who recommend adding equal access as a supported service (“Supporting Members”) observe that, “equal access is universally deployed, except in the case of

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6 As observed by one of the Opposing Members, “Tellingly, none of the interexchange carriers that participated in this proceeding – the would-be beneficiaries of an equal access requirement -- supported imposition of such a requirement.” *Separate Statement of Commissioner Kathleen Q. Abernathy, NPRM*, p. 40.

7 The National Exchange Carrier Association obtained a waiver of the requirement that equal access costs be capitalized and amortized, so that traffic sensitive pool members are allowed to recover the expenses in the year they are incurred. *Memorandum Opinion and Order*, 3 FCC Rcd 6042 (Com.Car.Bur 1988).

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CMRS carriers,” and that landline customers “have come to expect such equal access as a part of basic, universally available phone service.” *NPRM*, para. 79. The fact is, landline customers’ expectations are unfounded due to the restrictions of Section 332(c)(8) of the Act. Moreover, wireless customers carry no such expectation, nor do RCA/ARC member companies report customers demanding equal access.

CMRS carriers have never been required to deploy equal access. Nor has the safety clause embedded within Section 332(c)(8) been invoked to “prescribe regulations” to cure the denial of equal access, it being well recognized that wireless customers are better off without equal access.

Nor is the addition of equal access to the list of supported services supported by the factors set forth in by Section 254(c)(1) of the Act. 47 U.S.C. §254(c)(1)(A). Services essential to education, public health and public safety do not include equal access. Access to interexchange service is properly on the list of core supported services, but the concept of equal access - promoting competition for low cost long distance services - is unrelated to the definition of supported services. Wireless customers routinely take advantage of wide local calling areas and bundled minute offerings to avoid toll charges – fully understanding the value proposition that wireless service providers offer.

## **II. The Equal Access Requirement Would Raise Costs and Reduce Competition**

Imposing equal access will reduce competition and increase the cost of service in rural and high cost service areas. The requirement will simply require high-cost funds to be spent on equal access, rather than on expanding service to outlying areas that could otherwise be served (exactly what some ILECs wish to happen). On the other hand, *with* universal service support, CMRS

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operators can reach remote terrain more efficiently than carriers deploying local loops, thus reducing the cost to the subscriber. Wireless service also reaches users who may have a landline telephone in their office or their barn, but who also require wireless communications on the road or in the field.

The more ubiquitous this service becomes in rural and high cost areas, the better served will be the consumers who pay into the universal service fund. To impede the progress of wireless services into underserved territory by adding the equal access requirement would gravely disserve persons who depend upon mobile phones for safety and convenience.

The equal access requirement is not needed to promote the already robust competition among long distance service providers. In fact, it would have the reverse effect of increasing the cost of providing long distance to wireless customers, negatively impacting the size of the universal service fund. Wireless customers presently have access to buckets of minutes that are so economical that no separate local and long distance plans would be lower in cost by any reasonable expectation.<sup>8</sup> If equal access is imposed, wireless carriers will offer it as a separate rate package, passing through the long distance carrier's retail rates. The number of customers who will forego more attractive packages in order to select the long distance carrier of choice will be nil. Furthermore, a customer who roams outside his home service area may find that the adjacent wireless service provider is unable to allow the customer to continue or to initiate calls using the customer's preferred interexchange carrier. In sum, the requirement will add zero value to the consumer and reduce funds available for CMRS carriers to construct much needed infrastructure.

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<sup>8</sup> For example, one RCA member company offers consumers the ability to place 2500 minutes of calls to the conventional U.S. for \$5.00, or \$0.002 per minute.

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Wireless customers are advantaged by the contracts presently in place between CMRS providers and long distance interexchange carriers. The contracts are long term, based on volume, and incorporated into myriad wireless price plans. Some wireless carriers are hauling portions of their traffic over IP networks, further reducing costs. It is most unlikely that a single consumer could negotiate a rate below what is available currently from virtually every CMRS carrier. To take apart and renegotiate these contracts to accommodate the element of equal access would harm wireless users. Compelling wireless equal access in order for a wireless carrier to receive universal service funding support would be an unfortunate and unnecessary setback for consumers.

### **III. Competitive Neutrality Within Universal Service Exists and Should Be Preserved**

While exercising one's choice among interexchange carriers can be a benefit to consumers in certain circumstances, provisioning of equal access is not a goal of the universal service scheme, and does not advance the concept of competitive neutrality. Equal access is not presently a requirement for local exchange service providers seeking eligibility for federal support. Certainly it should not be parlayed into a barrier to entry by CMRS providers to whom the requirement is quite unsuited. Notably, the Joint Board recommended against adding advanced or high-speed services to the list of supported services for the very reason that it could jeopardize support currently provided to wireless carriers, who would no longer be eligible for universal service support because they are not providing advanced or high speed services. *Recommended Decision*, para. 17. So in at least one area the Joint Board recognizes that not all services are practical or necessary for all service providers. Placing on all types of carriers the requirements applicable to some, or more easily achieved by some, does not advance the goal of delivering basic and competitive services to the public, or equitably administering the deployment of universal service funds.

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In particular, CMRS carriers should not be required to provide equal access merely because ILECs offer it. If that were the case, the principle of competitive neutrality would dictate that ILECs provide mobile phones and Enhanced 911 location services. The Joint Board, for example, recommended against adding soft dial tone or warm line services to the definition of supported services, concluding that the services are generally considered to be wireline services offered out of the LEC's central office.<sup>9</sup> The Joint Board noted that wireless providers are not currently capable of providing a continuous connection to public safety answering points for all unactivated handsets, and that the effect of excluding wireless carriers from qualifying as ETCs would have a negative impact on competition. *Recommended Decision*, para. 31. The Joint Board has thus recognized that landline and wireless carriers need not provide the same services in order to preserve competitive neutrality within the universal service scheme.

#### **IV. Equal Access Is Not Necessary to Advance Ubiquitous Telecommunications Service**

Adding equal access as a required service for ETCs would be inconsistent with the goal of promoting universal availability of the core services and would not be in the public interest. In keeping with the goal of universal availability of core services, the Joint Board specifically rejected the nomination of prepaid wireless services for inclusion in the definition of supported services, stating, "Any requirement that an ETC provide a wireless service would render wireline carriers ineligible for federal support... This result would be inconsistent with the goal of promoting universal availability of the core services and would not be in the public interest." *Recommended Decision*, para. 39. Likewise, any requirement that an ETC provide a *wireline* service (such as equal

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<sup>9</sup> Soft dial tone or warm line services enable an otherwise disconnected phone to be used to contact emergency services (911) and the local exchange carriers' central business office.

access) would render *wireless* carriers ineligible for federal support, and would be not in the public interest.

**V. Defining Equal Access as a Universal Service Is Inconsistent with the Public Interest**

Supporting Members remark that requiring CMRS providers to provide equal access in order to achieve ETC status does not require CMRS providers to provide equal access. Customers of CMRS carriers who refrain from offering equal access simply will not receive the benefits of federal support. Commissioner Abernathy properly rejected this “Hobson’s Choice,” recognizing that “the only consequence of adding equal access to the list of supported services would be to require CMRS carriers seeking ETC status to provide equal access. The costs of complying with such a requirement undoubtedly would deter competitive entry in high-cost areas where service can be provided economically only if explicit universal services support is available.”<sup>10</sup>

As a practical matter, few if any CMRS carriers are going to offer equal access. Adding equal access to the list of supported services effectively removes wireless carriers from the category of local service providers who will be designated as ETCs. While this may gladden the hearts of some, it would harm the public and it would not withstand judicial scrutiny. To link equal access provision to the improvement of wireless services in rural and high cost areas is to delay or deny service to many of those areas.

Wireless consumers are not clamoring for equal access. As stated by the Supporting Members, “...the Wireless industry has experienced phenomenal growth since the passage of the Act, which indicates consumer satisfaction.” *NPRM*, para. 81. Supporting Members say that equal

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10      *Separate Statement of Commissioner Kathleen Q. Abernathy, NPRM*, p. 38.

access does not take away the existing wireless calling plans, but they do not consider the loss of bulk purchasing power by the wireless carriers. As discussed above, the Joint Board refuses to add many service requirements because they are inapplicable or non-beneficial to a particular type of service provider. Yet, inconsistently, they cite the principles of competitive and technological neutrality with the conclusion that, “To not require the same of all ETCs advantages wireless ETCs over wireline ETCs.” *NPRM*, para. 82. Obviously, however, to require wireless ETCs to provide equal access advantages wireline ETCs over wireless ETCs.<sup>11</sup> The Supporting Members’ reasoning seems to dismiss their earlier, clearer logic, that to require the same of all ETCs can disadvantage one class of carrier over another which can negatively impact competition (as with soft dial tone or warm line services), jeopardize support currently provided to wireless carriers (as with advanced and highspeed services), and fail to achieve the goal of promoting universal availability of the core services and does not serve the public interest (as with prepaid wireless services).

**VI. Extra Concerns Expressed by Supporting Members Can Be Addressed Separately**

The Supporting Members express concern that without the equal access requirement wireless carriers would experience a windfall because ILECs alone would incur the cost of equal access. And that cost is reflected in the amount of support both ILECs and wireless ETCs would receive. They do not appear to recognize the possibility that their concern derives from a mathematical calculation for distribution that, if need be, can be improved upon in the FCC’s alternative proceeding that will address this matter.

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<sup>11</sup> Presently there is no such advantage/disadvantage. Rural ILECs’ costs of equal access are arguably not within the costs recovered through high cost universal service funds. The costs are already excluded from portable funds distributed to ETCs, or the costs are already fully depreciated and recovered. This topic would be addressed in a separate FCC proceeding, as contemplated by the Opposing Members.

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The Supporting Members also express concern that wireless participation in the universal service fund is growing. The implication is that excluding wireless services from eligibility for universal service funding is in the public interest. However, the Supporting Members do not explain the good that would come from denying consumers the advantages of improved wireless services as a result of funding support.

The Supporting Members express concern that wireless carriers will make “unsound business plans based on the prospect of a potential windfall from universal service funding.” *NPRM*, para. 84. However, there is no basis to believe that any wireless carriers are making such plans, or that such should be the concern of the Joint Board. If this were a valid and balanced concern, then the Supporting Members should also express caution to landline carriers whose business plans may be based upon a continued dependence on receiving universal service funding to the same degree they have over the past decades.

Finally, the Supporting Members state that they want to “establish equal obligations for all and consistent ground rules,” *Id.* They seem not to recognize that the system already has that. It is the position of the Supporting Members that would change the equilibrium. The only reason to add to the list of required services is to impose additional costs on or make it more difficult for wireless providers or other new entrants to achieve access to universal service funds.<sup>12</sup>

It is not in the public interest to barricade access to funds by making it virtually impossible for wireless carriers to qualify. The harm will fall to wireless users in rural and high cost areas

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<sup>12</sup> The Supporting Members have given existing wireless ETCs only 82 days from this date to achieve equal access in order to maintain their ETC status. *NPRM*, para. 86.

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whose service will not be improved because improvements are not commercially feasible without universal service funding.

## **VII. Conclusion**

Adding required services and their attendant costs onto the universal service fund is counterproductive and contrary to the express will of Congress as embodied in Section 332(c)(8) .

The intent of the 1996 Act was to promote competition in all telecommunications markets without regard to technology. Imposing upon wireless carriers a feature of wireline service would prevent the benefits of federal universal service support from reaching rural and high cost service areas. For the reasons stated herein and by the Opposing Members, addition of equal access to the list of supported services should be denied. The list should remain unchanged.

Respectfully submitted,

**RURAL CELLULAR ASSOCIATION  
and  
ALLIANCE OF RURAL CMRS CARRIERS**

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## CERTIFICATE OF SERVICE

I, Loren Costantino, an employee in the law offices of Lukas, Nace, Gutierrez & Sachs, Chartered, do hereby certify that I have on this 14th day of April, 2003, sent by hand-delivery, a copy of the foregoing COMMENTS OF RURAL CELLULAR ASSOCIATION and ALLIANCE OF RURAL CMRS CARRIERS to the following:

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